

REMARKS/ARGUMENTS

Claims 1-25 are pending in the current application. Claims 1-25 are rejected.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1, 10, 12,13, 22 and 24 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Olivera '920 (See 5/06/04 Office Action, at page 2).

Applicants respectfully traverse these rejections. Olivera '920 does not teach or suggest all elements of either independent claims 1 or 13. First, no where does Olivera teach or suggest an intracanal shield having "a central porous member having pores sized for allowing air to pass through said porous member while preventing passage of fluids and solids therethrough" as is recited in independent claims 1 and 13 and their respective dependant claims. In fact, Olivera has no teaching whatsoever of the size of its pores, let alone a size for allowing air to pass through while preventing the passage of water. While Olivera does mention the number of pores per inch and per cent void volume, this does not provide a teaching of pore size, as there are any number of pore sizes which could correspond to these variables (See Olivera '920 at Col 4, lines 57-60). Further, as the Examiner correctly points out, "Olivera fails to disclose that the cap [i.e., its alleged intracanal canal shield] is hydrophobic (See 2/02/04 Office Action, at page 8). Clearly, if Olivera's cap (i.e., its alleged shield) is not hydrophobic, then Olivera can not and does not teach a intracanal shield having "a central porous member having pores sized for allowing air to pass through said porous member while preventing passage of fluids and solids therethrough. Accordingly, withdrawal of the rejection is respectfully requested.

Further, Olivera '920 does not teach an intracanal canal shield "being positioned laterally with respect to a miniature hearing device medially positioned in close proximity to the eardrum" as is recited in claim 1. In fact, Olivera necessarily teaches the opposite, i.e. that its wax guard 10 is positioned medially with respect a hearing aid device. (See Olivera '920, Figure 6 and Col 3, line 65 to Col 4, line 4). Moreover, if Olivera's wax guard is moved to the lateral side of its hearing aid, it will no longer be positioned over its sound positioning tube 51 and thus no longer

function as 'a wax guard....adapted to be temporally adhered over the portion of the hearing aid **nearest to the ear drum, fixed in position over the outlet port** [of the hearing aid, i.e., sound positioning tube 51]" which is its intended function. (See Olivera '920 Col 3, lines 27-29, emphasis added). Accordingly, for this separate and additional reason, Applicants respectfully request withdrawal of the rejection.

REJECTION UNDER 35 U.S.C. §103(a)

Claims 2, 4, 4,5, 7, 14, 16, 17, 19, and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Olivera '920 in view of Flagler '333 (See 5/06/04 Office Action, at page 4).

Applicants respectfully traverse this rejection. In regard to claims 2, 4, 4,5, 7, 14, 16, 17 and 19 (which depend from independent claims 1 or 13), not only does Olivera '920 fail to teach or suggest all elements of claims 1 or 13, it actually teaches away (see above). Therefore, the skilled artisan would not be motivated to combine Olivera '920 with the teachings of Flagler '333, as there would be no expectation of success. Further, Flagler '333 does not compensate for the deficiencies of Olivera '920. Therefore, the combination of Olivera '920 and Flagler '333 does not teach or suggest all elements of any of claims 2, 4, 4,5, 7, 14, 16, 17 and 19.

In regard to claim 25, as described above, Olivera '920 teaches away from an acoustically permeative cap shaped and dimensioned to be positioned entirely in the ear canal for extended wear therein to protect a **medially positioned hearing device**" as is recited in claim 25. Olivera '920 necessarily requires its hearing aid to be laterally positioned and if the order is reversed, Olivera '920 will not work for its intended function of "a wax guard....adapted to be temporally adhered over the portion of the hearing aid **nearest to the ear drum, fixed in position over the outlet port.**" Accordingly, the skilled artisan the skilled artisan would not be motivated to combine Olivera '920 with the teachings of Flagler '333, as there would be no expectation of success. Further, Flagler '333 does not compensate for the deficiencies of Olivera '920. To the contrary, Flagler actually teaches away from Olivera in that Flagler teaches that its protective membrane 16 is oleophobic (See Flagler '333, Col 4, lines 44-45) while Olivera teaches that its

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wax guard is "receptive to cerumen"(Olivera '920, Col 2, lines 31-32). Therefore, the combination of Olivera '920 and Flagler '333 does not teach or suggest all elements of claim 25.

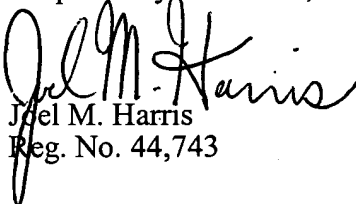
Claims 8, 9, 11, 20, 21 and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Olivera '920 in view of Brown '174 (See 5/06/04 Office Action, at page 9). As described above, not only does Olivera '920 not teach or suggest all elements of either claim 1 or 13, it actually teaches away. Therefore, the skilled artisan would not be motivated to combine Olivera '920 with the teachings of Brown '174, as there would be no expectation of success. Further, Brown '174 does not compensate for the deficiencies of Olivera '920. Thus, the combination of Olivera '920 and Flagler '333 does not teach or suggest all elements of any of claims 8, 9, 11, 20, 21 and 23.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-462-5329.

Respectfully submitted,


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